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Association

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA COURIER

December 16, 1997

Magalie Roman Salas, Esq., Secretary
Federal Communications Commission
1919 M Street, NW Room 200
Washington, DC 20554

RE: *Clarification of the Commission's Rules on Interconnection Between LECs and Paging Carriers, CCB/CPD No. 97-24*

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report & Order, CC Docket Nos. 96-98/95-185

Formal Complaints of AirTouch Paging against GTE, File Nos. E-98-08, E-98-10

Dear Ms. Salas:

On December 15, 1997, Angela E. Giancarlo, Esq. and Robert L. Hoggarth, Esq. of the Personal Communications Industry Association ("PCIA"), together with Carl W. Northrop, Esq. of Paul, Hastings, Janofsky & Walker met with Richard K. Welch, Esq. and Sonja Rifken, Esq. of the Common Carrier Bureau and members of their staff. Jeanine Poltronieri of the Wireless Telecommunications Bureau also attended the meeting. In the course of the meeting, the participants' discussion included issues related to the above-referenced proceedings.

The participants discussed the status of the SWBT clarification request and urged that the matter be decided in the near term for the reasons outlined and attached hereto. A written presentation was distributed and reviewed during the meeting. A copy of that presentation is also attached hereto.

Pursuant to §1.1206(b) of the Commission's rules, two copies of this letter are hereby filed with the Secretary's office and a copy of this filing is being sent today to the FCC staff members present during the meeting and to certain advisors to the Chairman and each of the

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Magalie Roman Salas, Esq.
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Commissioners as indicated below. Kindly refer questions in connection with this matter to me at 703-739-0300.

Respectfully submitted,

A handwritten signature in black ink, reading "Angela E. Giancarlo". The signature is fluid and cursive, with the first name "Angela" and last name "Giancarlo" clearly legible.

Angela E. Giancarlo, Esq.
Government Relations Manager

Enclosures (2)

cc: Richard K. Welch
Sonja Rifken
Jeanine Poltronieri

Kyle Dixon
Ari Fitzgerald
Paul Gallant
Karen Gulick
Kevin Martin
David Siddall
Peter Tenhula
Thomas Power

*In Re Clarification of the Commission's Rules Regarding
Interconnection Between LECs and Paging Carriers, CCB/CPD 97-24*

PCIA respectfully presents the following reasons for its desire for resolution of the above-referenced proceeding no later than December 31, 1997:

- Disputes over interconnection payments have caused paging carriers to "reserve" amounts on their balance sheets.
- Contested charges date back to September of 1996, meaning that the reserve items have grown to be material to the companies' financial statements.
- Paging carriers want to close their books for 1997 without large reserve accounts.
- Late fees and penalties are compounding; this complicates voluntary resolutions.
- Maintaining large financial accruals in reserve accounts adversely affects available cash flow.
- Some LECs have stopped provisioning new facilities, modified facilities and/or telephone numbers due to the disputed charges. Service to consumers is being disrupted.
- Some LECs have threatened to disconnect existing facilities.
- The above-referenced proceeding has been pending with the Common Carrier Bureau since April of 1997 without any action.

**PRESENTATION OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION
ON PAGING INTERCONNECTION**

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Having assumed significant obligations under the Telecommunications Act of 1996, paging companies are entitled to enjoy protections of the 1996 Act, including:

- The right to interconnect on fair and reasonable terms.
- Access on a fair, competitively-neutral basis to essential number resources.
- Non-discriminatory treatment vis-a-vis their competitors.

There are two-distinct components to the right of paging companies to interconnect on fair, reasonable and non-discriminatory terms.

- Relief of the paging company from having to pay the LEC for the delivery to the point of interface (the POI) of local telecommunications traffic that originates on the LEC network.
- Compensation to the paging company for the termination of traffic from the POI.

The legal right of paging companies to be relieved of charges associated with the delivery to the POI of the local LEC-originated traffic is firmly established:

- Section 51.703(b) of the Commission's rules provides: "A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC network."
 - Paging companies have correctly been found to be "telecommunications carriers" within the meaning of the 1996 Act.
 - The vast majority of pages originate and terminate in the same area, thus constituting local telecommunications traffic.
 - The effective date of Section 51.703(b) dates back to at least November 1, 1996.
 - The 8th Circuit expressly upheld Section 51.703(b) as it relates to LEC-CMRS interconnection.

Paging companies have the right to designate a paging switch within the LATA of the serving end-office as the POI.

- Historically, the LECs dictated that the POI be located at the paging switch. They should not now be allowed to prevent paging companies from maintaining this arrangement.
- Legally, paging companies are entitled to interconnect at any technically and economically feasible location.

— A POI within the LATA of the serving end office meets this requirement.

The language in the Local Competition First Report relieving paging companies of the obligation to pay charges associated with the delivery to the POI of LEC-originated traffic is immediate and unequivocal. *per §§ 201-202 352 251-252*

- Paragraph 1042 of the First Report states: “**As of the effective date of this Order, a LEC must cease charging** a CMRS provider or other carrier for terminating LEC-originated traffic and provide that traffic to the CMRS provider or other carrier without charge.” (Emphasis added.)
 - Paging companies have properly been found to be CMRS providers.
 - The language and legislative history of the 1996 Act supports the view that certain rights granted by Section 251(b) constitute “minimum requirements” that deserve to be given immediate effect.
 - Paragraph 1042 of the First Report was not among those vacated by the 8th Circuit.
 - Paging companies have relied upon this ruling in determining their course of conduct on interconnection matters.

Every state Commission that has ruled on the matter has upheld the right of paging companies to be relieved of charges for the delivery to the POI of local LEC-originated traffic:

- The California PUC (Cook Telecom/Pacific Bell)
- The Oregon PUC (AT&T Wireless/US West)
- The Minnesota PUC (AT&T Wireless/US West)

Having LECS pay all the costs associated with the delivery to the POI of local telecommunications traffic is fair and appropriate.

- The originating carrier (i.e. the LEC serving the landline phone used to initiate a page) should bear the cost of delivering local telecommunications traffic to the terminating carrier (in this case, the paging company).
- The sound principle of proportionality dictates that costs of connecting facilities be borne in relation to the percentage of use by each originating carrier.
- Other carriers against whom paging companies compete (e.g. two-way CMRS providers who also provide paging service over their networks) are not paying for the delivery to them of LEC-originated traffic. Competitive parity requires that paging companies be treated equally.
- It is a LEC-generated myth that paging companies are seeking “free” service. All that is sought is to have charges borne by the appropriate party.

LOCAL PAGE TERMINATION AND COMPENSATION FLOW

COST RECOVERY and REVENUE FLOWS

BASIC LEC SERVICE

(\$=> LEC end user to LEC)

LOCAL CALLING PLAN

(\$=> LEC end user to LEC)

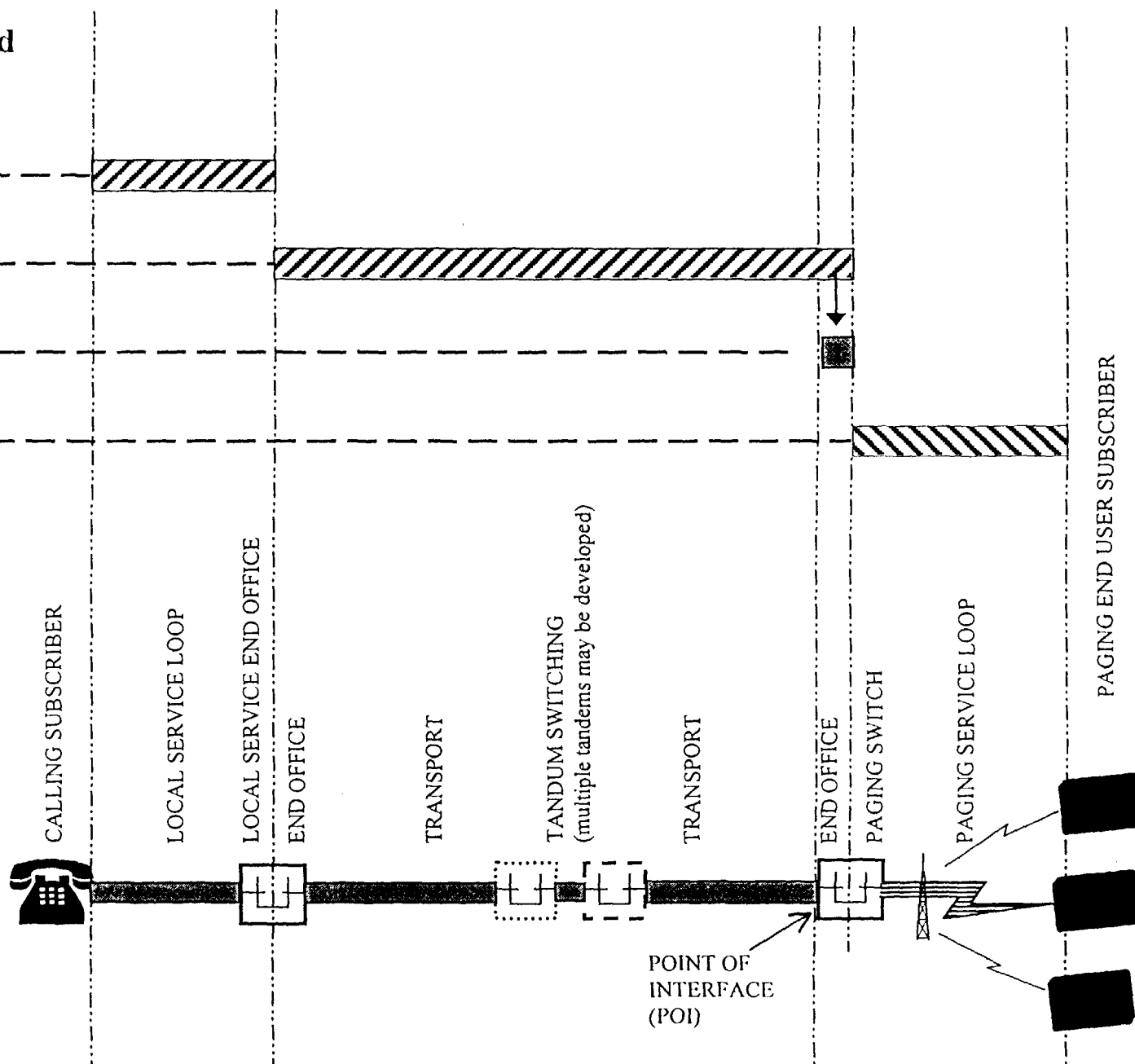
CALL TERMINATION

(\$=> LEC to CMRS)

BASIC CMRS SERVICE

(\$=> CMRS end user to CMRS)

SERVICE COST COMPONENTS



Despite their clear entitlement, paging companies are not enjoying the relief they deserve from prohibited charges:

- The Southwestern Bell Telephone (SWBT) “clarification” request — which has been pending since April — has been seized upon by certain LECS to justify continuing to assess prohibited charges.
- Some LECS are threatening to terminate existing services, refusing to provision new or modified facilities and withholding essential numbering resources to extract payment of prohibited charges.
- The “stalemate” created by the pending SWBT request has interfered with voluntary negotiations and fostered litigation at the federal and state levels.
- Amounts in dispute have reached critical proportions and must be resolved by year end to permit financial statements to be closed and financial results to be reported accurately.

PCIA seeks the following rulings from the Common Carrier Bureau in response to the request of Southwestern Bell Telephone (SWBT) for clarification of the Commission's Rules regarding interconnection between LECS and paging carriers (CCB/CPD No. 97-24):

1. A LEC may not assess charges on a paging service provider for local telecommunications traffic that originates on the LEC's network. The prohibition extends to all charges — including traffic sensitive charges, flat rate charges, equipment and interconnection facility charges, etc. — for local transport between the LEC's end office or tandem and the point of interface (POI) with the paging service provider within the Local Access and Transport Area (LATA).
2. Section 51.703(b) of the Commission's rules prohibits LECs from assessing the aforementioned local transport charges. The temporary stay by the Eighth Circuit of Section 51.709(b) of the Commission's rules — which stay has now been vacated by the Court with respect to Commercial Mobile Radio Service (CMRS) providers including paging companies — did not allow LECs to continue to assess any charges on paging service providers for local transport between the LEC's end office or tandem and a POI within the LATA.
3. The refusal of a paging company to pay LEC charges for local transport between the LEC's end office or tandem and a POI within the LATA does not entitle the LEC to disconnect or discontinue any existing service or facility, to refuse to provision new or modified services or facilities upon reasonable request of the paging service provider, or to refuse to honor a request for numbers.
4. A paging service provider is entitled to relief from the imposition of charges for local transport between the LEC's end office or tandem and the POI, regardless of whether it previously secured interconnection facilities under a negotiated interconnection agreement or by tariff, without undergoing the formal negotiation, mediation or arbitration procedures specified in Section 252 of the Communications Act.